IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5666 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT CYPROMET LTD

Versus

ASSISTANT P F COMMISSIONER

Appearance:

1. Special Civil Application No. 5666 of 2004

MR KM PATEL for Petitioner No. 1

MR MS RAO for Respondent No. 1

MR KR KOSHTI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision:26/07/2004

CAV JUDGEMENT

1. By the present petition, the petitioner has challenged the order dated 11.8.2003 passed by the respondent No.1 in exercise of powers under section 7-A

of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ("the said Act" for short) by which a demand of unpaid provident fund of the employees of the petitioner Company to the tune of Rs.6,62,759/- towards principal and Rs.1,85,186/- towards interest has been raised against the petitioner. The petitioner has also challenged the order dated 15.1.2004 by which the review application filed by the petitioner against the said order dated 11.8.2003 came to be rejected.

2. Basic facts which are, more or less, undisputed can be stated at the outset. The petitioner is a Company incorporated under the Companies Act, 1956 and is engaged in manufacture of copper and copper alloys tubes and rods. The employees of the petitioner Company receive salary which includes certain allowances, such as house rent allowance, conveyance allowance, medical allowance and lunch allowance. It is not in dispute that the employees of the Company do not receive dearness allowance and that the Union has raised an industrial dispute demanding dearness allowance from the petitioner Company. It appears that the respondent No.1 initiated proceedings under section 7-A of the said Act against the petitioner in response to which the petitioner appeared before the respondent No.1 and submitted that there is no contribution outstanding due and payable and that the inquiry should be dropped. The respondent No.1, however, by order dated 11.8.2003, was pleased to come to the conclusion that the petitioner was required to deduct and deposit provident fund dues on total emoluments including the amounts paid to the employees under the headings of lunch allowance, medical allowance, conveyance allowance and house rent allowance. Accordingly, the above mentioned demand was raised against the petitioner. The petitioner sought review of the said order dated 11.8.03 which also came to be rejected by the order dated 15.1.04 as mentioned above.

3. The short question that arises for consideration in the present petition is whether the respondent No.1 was correct in directing the petitioner to deduct and deposit with the respondent No.1 provident fund for amounts paid to the employees under the headings of lunch allowance, medical allowance, conveyance allowance and house rent allowance.

4. Learned advocate Shri K.M.Patel appearing for the petitioner has contended before me that the petitioner has paid up the entire provident fund dues and the demand is unjust and unreasonable. It is his contention that the petitioner is not required to deduct or contribute

towards provident fund on different allowances paid to the employees including house rent allowance, medical allowance, conveyance allowance and lunch allowance. Relying on the definition of "basic wages" under section 2(b) of the said Act, he has contended that the above mentioned benefits paid to the employees cannot be covered under the term "basic wages" as defined under the Act. He, therefore, relying on section 6 of the said Act contends that since the above mentioned payments are not part of basic wages, the petitioner is not required to contribute towards provident fund on the said amounts. Learned advocate Shri Patel has also contended that the respondent No.1 has erred in observing in the impugned order dated 11.8.2003 that the petitioner has not cooperated with the proceedings. It is his submission that the petitioner had supplied full details. He has also submitted that in the impugned order dated 11.8.2003, the respondent No.1 has relied on the report of Squad of Enforcement Officers which was never supplied to the petitioner. Thus the impugned order Annexure A has been passed in violation of principles of natural justice. Learned advocate Shri K.M.Patel, however, concedes that since the issue involved is one of pure question of law, remanding the matter for further hearing on the technical ground of non-supply of the report may not be necessary.

5. Learned advocate Shri M.S.Rao appearing for the respondent No.1 has supported the orders passed by the respondent No.1. He contends that the allowances are part of the basic wages and that therefore the petitioner ought to have deducted and contributed towards provident fund considering the said allowances also and since the petitioner had not deposited the said amounts with the Provident Fund Commissioner, the respondent No.1 has correctly passed the impugned orders. He contends that the orders under challenge are appealable under section 7-I of the said Act and the petitioner be directed to pursue the remedy of statutory appeal.

6. Learned advocate Shri Koshti appearing for respondent No.2 has also supported the decisions of the respondent No.1. He submits that the orders under challenge are proper and legal and that the petitioner should be directed to prefer appeal against the same in case the petitioner is aggrieved by the same.

7. Learned advocate Shri K.M.Patel has relied on the decisions of the Hon'ble Supreme Court reported in AIR 1963 SC 1474 (M/s.Bridge & Roofs Co. v. Union of India) in which it is observed that the "basic wages" do not

include any kind of bonus including "production bonus". He has relied upon, in particular, the discussion in para 7 and 8 of the said decision in support of his interpretation of section 2(b) and section 6 of the said Act. Learned advocate Shri Patel has also relied upon the decision of the Hon'ble Supreme Court reported in 2001-II-LLJ 1068 (T.I. Cycles of India v. M.K.Gurumani & ors.) in which it is held that the term "wages" as defined under section 2(s) of the Payment of Gratuity Act and the term "basic wages" as defined under section 2(b) of the said Act make it clear that there is no basic difference between the two expressions used in these two enactments in so far as exclusion of bonus from the emoluments is concerned.

8. Learned advocate Shri Koshti has relied upon a decision reported in (2001) 2 SCC 519 (Shree Changdeo Sugar Mills v. Union of India) in support of his contention that the basic wages include wages paid to the employees for the period when an employee was deemed to be on duty and the employer's contribution towards provident fund has to be paid on said amounts.

9. Since the only question that is involved in the present petition is that of pure question of law requiring interpretation of the provisions of sections 2(b) and 6 of the said Act, I do not think it necessary to insist that the petitioner should first approach the Appellate Authority under the said Act. The preliminary objection raised by the respondents is therefore, turned down.

10. It would be useful to note the provisions of section 2(b) and section 6 of the said Act at this stage:

"2(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include --

(i) the cash value of any food concession;

(ii) any dearness allowance that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such

employment;

(iii) any presents made by the employer;"

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"6. Contributions and matters which may be provided for in Schemes -- The contribution which shall be paid by the employer to the Fund shall be ten per cent of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees whether employed by him directly or by or through a contractor and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten per cent of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten per cent" at both the places where they occur, the words "twelve per cent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupees, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation 1 - For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation 2 - For the purposes of this section "retaining allowance" means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for

retaining his services."

A plain reading of clause (b) of section 2 of the said Act makes it clear that the term "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in accordance with the terms of contract of employment and which are paid or payable in cash to him. The said definition is however qualified by the exceptions carved out in the definition where the clause provides that the term "basic wages" does not include those items mentioned in sub-clause (i) to (iii) of clause (b) of section 2. Section 6 of the said Act provides for the contribution which shall be paid by the employer to the Fund which shall be a certain percentage of the basic wages, dearness allowance and retaining allowance. Explanation 1 to section 6 further makes it clear that for the purpose of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee. These provisions of the said Act are required to be interpreted to decide whether the amounts paid under the headings of house rent allowance, medical allowance, lunch allowance and conveyance allowance are required to be taken into account for the purpose of making contribution in the provident fund scheme of the employees.

11. Before undertaking the exercise of interpreting the said provisions, it would be useful to notice some of the decisions of the Hon'ble Supreme Court on the principles of interpretation of statute. In the decision reported in AIR 2003 SC 2917 (Union of India v. Rajiv Kumar), the Hon'ble Supreme Court has made the following observations :

"It is well settled principle in law that the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers."

In the decision reported in AIR 2003 SC 511 (Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd.), the following observations were made by the Hon'ble Supreme Court:

"23. It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by

section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.

24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

26. It is also well settled that a beneficent provision of legislation must be liberally construed so as to fulfill the statutory purpose and not to frustrate it."

In AIR 2001 SC 3527 (Steel Authority of India Ltd. v. National Union Water Front Workers), the Hon'ble Supreme Court observed that "it is now well settled that in interpreting a beneficial legislation enacted to give effect to directive principles of the State policy which is otherwise constitutionally valid, the consideration of the Court cannot be divorced from those objectives. In a case of ambiguity in the language of a beneficial labour legislation, the Courts have to resolve quandary in favour of conferment of, rather than denial of, a benefit on the labour by the legislature but without rewriting and/or doing violence to the provisions of the enactment" In a decision reported in AIR 1965 SC 1076 (Regional P.F. Commissioner v. Shibu Metal Works), which was also a case under the said Act, the Hon'ble Supreme Court observed in para 13 of the decision as follows:

"Reverting then to the question of construing the relevant entry in Sch. 1, it is necessary to bear in mind that this entry occurs in the Act

> which is intended to serve a beneficent purpose. The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. This rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction."

Considering the statement of objects and reasons for enactment of the said Act and also as held by the Hon'ble Supreme Court in the case of Regional P.F.Commissioner (supra) there is little scope for doubt that the said Act is a beneficent legislation and the provisions contained therein should be interpreted accordingly.

12. Reverting back to the provisions of the said Act, one finds that section 2(b) of the said Act defines "basic wages" to mean all emoluments. The term emoluments has not been defined under the Act. Webster's New Twentieth Century Dictionary (unabridged) Second Edition describes word "emoluments" as : 1. the profit arising from office or employment; that which is received as compensation for services; payment received for work; wages, salary, fees; 2. advantage, gain in general. It is thus clear that term 'emolument' includes variety of benefits received by an employee for having rendered services. Various allowances such as lunch allowance, medical allowance, conveyance allowance and house rent allowance paid by the employer and received by the employees for having rendered the service would be covered under the term 'emoluments'. Once a payment is held to be 'emolument' the same becomes part of "basic wages" of the employee by virtue of definition of the term "basic wages" under section 2(b) of the said Act, unless it falls under any of the exceptions provided therein. The Legislature included all emoluments in the definition of term "basic wages". Only in cases where

exception was sought to be made, the definition "basic wages" itself carved out such exceptions by providing that "basic wages" shall not include amounts such as the cash value of any food concession, any dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance as also any presents made by the employer. It can, however, be noted that section 6 of the said Act requires that the contribution be made to the Fund which will be of certain percentage of basic wages, dearness allowance and retaining allowance, if any. Again, explanation to section 6 of the said Act provides that the term dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee. Thus, though the definition of "basic wages" under section 2(b) of the said Act excludes dearness allowance and cash value of any food concession, section 6 requires that contribution shall also be made on not only the basic wages, but also dearness allowance, which in turn shall be deemed to include the cash value of any food concession allowed to the employee.

13. The plain intention of the Legislature is that the contribution to the Fund should be made on basic wages, dearness allowance and retaining allowance. The term basic wages under section 2(b) of the said Act does not permit any ambiguity and the plain intention of the Legislature appears to be to include all emoluments other than those which are specifically excluded. I do not find any warrant to interpret section 2(b) of the said Act to exclude the allowances such as medical allowance, lunch allowance and conveyance allowance from the definition of term "basic wages". There is nothing in the said definition that the Legislature intended that the benefits paid to the employees under the said headings are to be excluded for the purpose of the term "basic wages". As pointed out earlier, the term "basic wages" is defined as to mean all emoluments which are earned by an employee. In cases where the Legislature intended certain benefits to be excluded from the meaning of the term "basic wages" the same have been specifically provided for.

14. As pointed out earlier, this being a beneficent legislation, in case there are two views possible, this Court would take a view which would further the object of the Act and one which would be in favour of the workers rather than adopt an interpretation which would defeat the purpose of the Act. However, in this case, I find no ambiguity whatsoever in the definition of the term "basic wages" as mentioned earlier. I therefore have no

hesitation to come to the conclusion that the respondent No.1 was perfectly justified in including the benefits received by the employees under the headings of lunch allowance, medical allowance and conveyance allowance and directing the petitioner to pay the provident fund contribution calculated on the said amounts also.

15. In the view that I have taken, I take inspiration from a decision of the Bombay High Court reported in 1995-II LLJ 279 (Hidustan Lever Employees Union v. R.P.F.C. & Anr.) in which it was held that in context of the term "basic wages" as defined under section 2(b) of the said Act unless the payment falls in any one of the specifically mentioned excepted categories, every emolument which is earned by the employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him must be included within basic wages. Even the decision relied on by Shri K.M.Patel reported in AIR 1963 SC 1474 (supra), the Hon'ble Supreme Court was pleased to observe that "there is no doubt that 'basic wages' as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. If there were no exception to this definition, there would have been no difficulty in holding that production bonus, whatever be its nature would be included within this terms .....".

16. The question of house rent allowance, however, stands on a slightly different footing. Section 2(b) as discussed earlier while defining the term "basic wages" to include all emoluments earned by an employee also provides that certain benefits shall not be included in the said term. One of them is house rent allowance. In view of this clear exclusion of house rent allowance from the term 'basic wages", I find that the respondent No.1 has committed error in including the benefits received by the employees under the heading of house rent allowance for the purpose of calculating the provident fund contribution.

17. In conclusion, the impugned order Annexure A and B are required to be upheld in so far as the same include the benefits received by the employees under the headings of medical allowance, conveyance allowance and lunch allowance for the purpose of calculating the provident fund contributions. The same however cannot be upheld in so far as the orders pertained to the benefits received by the employees under the heading of house rent

allowance. The respondent No.1 shall have to recalculate the amounts required to be paid by the petitioner on the basis of this order for which purpose the impugned order Annexure A and B are quashed and set aide and the respondent No.1 is directed to pass fresh order in accordance with law bearing in mind the observations made in this judgment.

18. The petition is disposed of accordingly. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)